

(1957) 08 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 128 of 1956

Harnath Rathi

APPELLANT

Vs

State of Hyderabad (Now Andhra Pradesh)

RESPONDENT

Date of Decision : 21-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1958 AP 222

Hon'ble Judges : K. Subbarao, C.J.;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : Gopal Rao Ekbote, Bishamber Dayal and Dharindhar Singhi, for the Appellant; Anant Swarup Chowdhary, Govt. Advocate, for the Respondent

Judgement

Jaganmohan Reddy, J.—This is a petition under Art. 226 of the Constitution of India for Quashing the order of the Revenue Minister dated 5-7-1955 and for declaring the pattas of the lands purchased by the petitioner, to be lawful and in the alternative to ward compensation.

2. It is alleged that sometime prior to the ant of the Impugned pattas, they were entered the Settlement Revision of the Taluka of (sic)nur, Adilabad District, and a report was forwarded to the revenue department which concurred with it. The Executive Council also approved the proposal which was sanctioned by H.H. the Nizam by a fireman dated the 15th Khada 1346 Hizri (6-5-1928).

The Superintendent, Settlement purporting to (sic)under Rr. 14 and 15 of the Survey and Settlement Rules thereafter granted pattas of 13,596 this (about 10.196 acres) in July. 1928 to 13 (sic)sons in 107 villages of the said Utnur Taluka the Adilabad District. The petitioner purged the entire area for O. S. Rs. 15,000/-(sic)m those 13 persons through a registered sale (sic)d dated 28-3-1929, after which the vendors (sic)d Razinama applications.

After the Razinamas were filed by the patters, the Tahsildar issued a notice No. 6392 dated 9th Aban, 1338 F. (14-9-1929) for the payment land revenue which

notice was received by the petitioner through the Commissioner of Police Hyderabad. When the petitioner took the count of Rs. 5,350/- for payment of land reve-(sic) in the Tahsil office, the Tahsildar refused to (sic)pt the amount as he had received orders (sic)n the Subedar not to accept the amount from the petitioner.

It appears that soon after the pattas were (sic)nted, the Subedar of Warangal took object to the grant of these pattas on the ground (sic)t the Superintendent, Survey and Settlement (sic)no power to grant such big areas and that to persons not residents of Utnur Taluka. He, before, moved for the cancellation of the (sic)as and directed that revenue should not be (sic)ived pending further orders.

The petitioner thereafter tried to get possession of the lands by submitting several applications in the Revenue Secretariat from 1932 to (sic) but according to him, he was informed (sic) time to time during that period that the (sic)ter was under consideration and that he (sic)d wait for sometime. The petitioner on own averment states that he waited for 22 (sic)s hoping for a settlement.

It was seven months after the Police Action the petitioner to the Military Governor and Prime Minister of India and was informed the matter was forwarded to the Government of Hyderabad for a decision. On receiving intimation the petitioner submitted an application before the Board of Revenue request-that the lands bought by him should be referred in his name; and that if the said (sic) are intended to be given to others he was prepared to receive compensation. The Board of Revenue, however, endorsed 9-7-1950 to the effect that no action could be (sic) as the patta of the lands was already can-(sic) by the Government and that the persons whom the petitioner purchased the lands (sic)never obtained possession of the lands. It (sic)ved that when the vendors themselves had ownership they could not convey any title (sic)e petitioner and that if the petitioner had claim he can agitate it in a civil Court. The (sic)oner thereafter filed a revision petition be-(sic)the Minister for Revenue who rejected it. against this order that this petition under (sic)226 has been filed.

3. The Government in its counter stated that though the sanction of the Nizam was granted for the revision settlement through his firman dated 15th Zikhada 1346 Hizri, the Superintendent, Survey and Settlement had no power to grant patta of such large areas; that he had granted these pattas illegally and without any authorization and had committed fraud for which he was removed; and that the Subedar through his letter No". 189 dated 24th Khurdad, 1338 F. (28-4-1929) postponed the Jamabandi.

The counter further alleged that the Superintendent, Survey and Settlement had power to grant patta of the Uftada lands (Cultivable lands left fallow for 5 years) at the time of the announcement of survey and settlement, but that power was confined to small areas only, but where the area was large action under R. 13 of the Settlement Rules has to be taken; that Circular No. 14 of 1322 F. lays down that the Settlement Officers can accord sanction for patta only in cases of

Razinama; that Circular No. 22 of 1322 F. specified the extent of land in respect of which pattas can be sanctioned by different officers of the Revenue Department under which the Settlement Officer's power is circumscribed and he had no power to grant pattas for such large areas; and that in any case the Settlement Officers had no power to grant pattas in the names of nonresidents.

It was further averred that at the time when the petitioner purchased these lands, the validity of the grant of the pattas was itself under consideration and the petitioner cannot be said to be a bona fide purchaser; that the lands were never demarcated and that no possession was ever given to the vendors that the patta of the land in the name of the original allottees having been cancelled, the petitioner cannot claim any better rights and that in any case the determination of the extent of the area which could be validly allotted by the Superintendent, Survey and Settlement and the validity of the grant of patta of the said area of lands in the name of the petitioner cannot be canvassed in proceedings under Art. 226. of the Constitution, the proper remedy being by way of a suit.

4. Learned Advocate for the petitioner contends inter alia that the Superintendent, Survey and Settlement had the power to grant pattas of large areas of Kharij Khata lands, i. e. lands which have been struck off the account on the basis of Razinama from the ryots and included in the account of fallow lands; that the patta was not cancelled, nor any intimation given to either the pattedars or the petitioner; that the lands were demarcated and are in several villages and do not form part of a Gut number; and that Circulars Nos. 14 and 22 of 1322 F. have no application.

5. The Revenue Minister had in his order observed that neither possession was given to the revision-petitioner nor patta was given to him, because simultaneously with the issue of orders of patta, the proceedings were held to be collusive and the Superintendent, Survey and Settlement was removed from service. He held that under R. 15 of the Survey and Settlement Rules, the Superintendent had only power to grant a patta of small areas of uncultivated lands (Uftada), but if it is a Gut number R. 13 of the Survey and Settlement Rules states that S. 54 of the Land Revenue Act should be followed.

He further referred to the Circular No. 22 of 1322 F. according to which the area of lands which can be given on patta by the Revenue Officers, namely, from the Gasholder upwards to the Government, has been specified and procedure has been prescribed for the approval of Razinama by the Superintendent of Survey and Settlement which does not confer any power on him to grant lands on patta. He was, therefore, of opinion that the Circulars read with the Rules do not confer any right on the Superintendent to let out the lands on patta of large areas at the time of settlement, for the reason that if the Director General could only grant a patta of the land to the extent of 500 acres, it cannot be said that the Superintendent of Survey and Settlement was given power to let out, lands to the extent of 13,000 acres. In this view he dismissed the revision petition.

6. It will be observed that there was no mention of the cancellation of any patta in the Revenue Minister's order. The Revenue Board stated that the pattas have been cancelled, and the learned advocate for the Government refers us to letter No. 2070 from the Subedar dated 16th Aban 1345 F. (1936) to show that the pattas were cancelled.

The learned advocate for the petitioner, however, contends that this letter does not refer to the cancellation of the Kharij Khata lands, which according to him were the lands granted to the pattedars as shown by the statement annexed to the letter, while the advocate for the Government denies this fact.

7. We will now briefly examine the relevant rules, circulars and provisions of the Hyderabad Land Revenue Act.

8. The petitioner relies on R. 15 of the Land Revenue (Survey and Settlement) Rules as empowering the Superintendent, Survey and Settlement to grant patta of large areas, The rule is to the effect that the Tahsil after it gets information from the Settlement Department of the fixation of the assessment and its notification for the Taluka, is not empowered to sanction an application for the grant of a patta of a Banjar and fallow lands from any cultivator.

The applicant must be informed that he should be present before the Superintendent, Settlement and Survey at the time of Shunuvayi or notification and the original application should be sent to the office of the Settlement Superintendent so that he may decide at the time of Shwauvayi in the presence of all the ryots of the village in accordance with S. 54 of the Land Revenue Act.

Rule 13 states that if any application for laoni regarding Gut number or similarly for an extensive area on which assessment has been fixed by the Settlement Department is received. it should be divided in accordance with the settlement Rules and Assessment fixed, i. e., the area should be in the case of wet lands not less than one acre and in the case of dry lands not less than 8 acres. After that, action on the application will be taken as per S. 54 of the Land Revenue Act.

Rule 14 lays down that the Authority to sanction relinquishment for the transfer of patta or to sanction application for the unoccupied lands rests with the Tahsildars; but during the period of notification of assessment of settlement Or Revision, the authority to give on laoni fallow lands and the lands relinquished, and also the authority to sanction relinquishment of Kublliat rests with the Superintendent of the Settlement Department. It is stated in the rule that it is not necessary to obtain relinquishment that time.

The signature of the ryot or if he does not know writing, his thumb impression may be taken and also the signature of the patel or patwari will be taken after writing the word "not aggrieved on. the Wasul Baki only. The Revenue Department Circular No. 14 of the 22nd Farwardi 13 P. appears to amend R. 14 of the Settlement Rules on the report of the Taluqdar of Adilabad In his memorandum he had drawn attention the Government to the fact that the

Settlement Officer should not be given the authority to sanction relinquishment at the time of the Shunuva because the Settlement Department while making the notification of assessment works in a hurry and they do not for that reason get chance to find out the full facts of the requirement or the circumstances under which requirements are made...

On a consideration of this report it was ordered by the Nawab Madar-ul-Maham, the Prime Minister, that while the Superintendent of Settlement Department can obtain relinquish applications, it is incumbent on them to sanction these settlements to the Taluqdars of the district for final settlement. There is also another Circular No. 22 dated 5th Thir 1322 F. regarding the objection raised by the Inspector-General of Forests who complained that thousands acres of land of Government containing valuable forests are being given on patta without the sanction of the Forest Department due to which thousands of toddy trees in the Taluks of Kottagiri and Lingsgur have been cut down entailing a huge loss to the Government; that Circular 24 of 1320 F. was issued to the effect that it was found necessary to give government number 1 exceeding one hundred acres on patta, sanction of Government should be obtained.

It was stated that as the last mentioned circular, however, gave rise to great administrative difficulties and a lot of delay, the then Deputy Director General of Revenue, Mr. Wakefield, proposed to amend the Circular and the Nawab Madarul Maham, Prime Minister amended Circular No. 24 of 1320 F. and ordered that future the officers noted below can sanction on patta:

1. Tahsildar of the Taluq up to 50 acres each ryot.
2. Second and Third Taluqdar up to 100 acres for each ryot.
3. First Taluqdar up to 200 acres for each ryot.
4. Subedar up to 400 acres for each ryot.
5. Dy. Director general (Revenue) 500 for each ryot during tour or from a proposal proposed by the Zilledars based on the petitions filed.
6. Director General of Revenue 500 acres each ryot.

In case it is found necessary to give lands in excess of the powers of the Subedar, such proposals should be submitted to the Deputy Director of Revenue and he may accord sanction to the extent of the powers vested in him and the land in excess of his powers, sanction of Government should be obtained." It was further stated that as most of the rich persons procure fictitious applications or entered fictitious records and acquired lands for themselves, the Tahsildar of Taluq or the Division Officer himself should verify these petitions in the manner prescribed therein.

9. It would appear from a Circular No. 22 of the 24th Aban, 1318 F. that certain new settlement rules had been promulgated after the Land revenue Act was passed in 1318 F. and the old settlement Rules had been repealed by that Act.

his Circular however, informs that all the provisions of the old settlement rules, and the provisions of the new settlement rules which have (sic)-ot been repealed by the Land Revenue Act have been complied together and promulgated through the Circular and that action should be taken accordingly.

Learned advocate states that the settlement (sic)les have been sanctioned by H. E. H. the Nizam, (sic)bile the Government contends that in accordance with Circular No. 22 of 1318 F. issued by the (sic)ind Revenue Department, the settlement rules (sic)ire promulgated by the Revenue Department through the above circular and therefore they (sic)n be amended by further circulars of the Government in the Revenue Department.

Neither side has referred us to any authority (sic)ider which the circulars have been issued and (sic)etber the settlement rules referred to by the (sic)rned advocate for the petitioner have received the sanction of H. E. H. the Nizam or whether they are issued as Government Orders. If (sic)is the former, it is said that the Prime Minister also empowered to legislate and amfend.such (sic)les which are sanctioned by H. E. H. the Nizam.

On a perusal of Vol. 10 of the Hyderabad (sic)de containing the legislative enactments, we (sic)d that the Madarul Maham has been assent-(sic)f to legislative enactments beginning from Act of 1305 P. (1895) till 1322 F. (1913) after which (sic)E. H. the Niam has been giving his assent, (sic)en the Land Revenue Act VIII of 1317 F. has been enacted with the assent of Madarul Maham. sub-section (2) of S. 1 of the Act, as stated in particular No. 22 of 1318 F. saves the rules and (sic)ters in force before the Act until rules related to such matters are made under the Act, (sic)vided they are not repugnant to the provisions of the Act.

The several circulars issued after the Land revenue Act lay down the procedure for applications for grant of land to be made under S. of the Act a translation of which is in the owing terms:

54. (1) when any person is desirous of take unoccupied land he shall before occupying land submit a petition to the Tahsildar and (sic)ain his permission in writing.

(2) On such petition being submitted, the Tahsildar may in accordance with the rules (sic)de by the Government in this behalf from (sic)e to time give permission in writing for occupation.

10. The expression used in the above section "Arazi Galr Maqbooza" that is land not in possession of any one. An application for (sic) unoccupied land must be made under S. 54 (sic)even under R. 15 of the Survey and Settlement Rules. These applications are to be decid-(sic)it the time of Shunuvayi under S. 54 of the Revenue Act. The Government is empowered to (sic)e rules under S. 172 (1) of the Act which (sic)orises the Government to carry out the pur-(sic)s and objects of the Act and for the (sic) of all persons in matters concerned with the

(sic)rcement of the Act in matters not expressly (sic)ided for in the Act.

It is not evident whether any rules have been made by the Government for the purposes (sic) 64 or whether the circular pertaining to it is issue under the rule (sic) power (sic) on the Government (sic) under (sic) of the Act it is declared that all lands(sic) these belonging to persons or class legally capable of holding property and those in respect to which any other order under any law have been given, are property of the Government.

It is also provided that it shall be lawful for the Taluqdars or other officers appointed by the Government for this purpose subject to rules sanctioned by the Government and contained in notification and the order of the Subedar to dispose of them in their discretion, provided the right of way or other right legally vesting in any person or public shall subsist. It is thus seen that the Taluqdar under S. 24 and the Tahsildar with respect to unoccupied lands under S. 54, are empowered, subject to rules to be made by the Government, to dispose of lands belonging to Government.

As we have said we have not been referred to any rules made under the aforesaid provisions to exercise of the rule-making authority of the Government under S. 172 (1) and in any case no rule can be made contrary to the express authority vested In the Tahsildar to deal with applications relating to unoccupied lands and confer that authority upon the Superintendent, Settlement.

11. Learned advocate for the petitioner contends that pattas have not been granted under S. 54, because the lands are Kharij Khata lands & are not governed by that Section. Again we have not been referred to any law under which there is any such specific provision for the grant of Kharij Khata lands which are unoccupied lands except S. 54 which specifically deals with unoccupied lands.

On this construction, "the Superintendent, Settlement, does not appear to possess any powers to grant the lands. Even oh the assumption that the Settlement Rules referred to above have been given the effect a legal enactment by the sanction of H. E. H. the Nizam, the subsequent amendments of these, rules by the Madarul Maham who appears to be authorized to sanction legislative enactments, could amend these rules.

The amendments effected by Circular No. 23 of 1322 F. of the Settlement Rules circumscribe the powers of the various Revenue Officers to grant lands. But it is again contended by the (sic) ed advocate for the petitioner that this amendment only refers to Gut numbers i.e., large areas of land which have not been demarcated under the Settlement Rules, while the learned advocate for the Government submits that the lands granted to the petitioner were Gut numbers and that the amendments are not confined to Gut numbers alone, but also limit the power of the Revenue Officers to grant land of any description-It would appear from Circular No. 22 of 1318 that a compendium of the Settlement Rules was Issued by that Circular, of the new rules and old rules unrepeated by the

Land Revenue Act and even if the contention of the learned advocate for the petitioner is to be accepted, that the amendments only relate to Gut numbers, the question whether the Superintendent, Settlement had the power to grant on patta lands under dispute would depend upon the determination of the further question whether these lands are Gut numbers.

If they are not Gut numbers. It will then be necessary to determine whether the Superintendent had the power independently of Ss. 54 and; 24 of the Land Revenue Act to grant any lands on patta and also to consider the effect of the later circulars, namely, Circular No. 1 of 23rd Azur, 1343 F. and Circular No. 7 of 20th Ardi-behist, 1350 F. and which were issued as clarification of the action to be taken under R. 15.

It is stated in the last mentioned circulars that the amendment of R. 15 is merely to the effect that no fresh pattas be granted by the Revenue Department from the date on which the Settlement Commissioner fixes the, date of Notification or Shunuvayi and informs the Tahsil office. This is only for the purposes of ensuring that the Settlement Commissioner may get an opportunity to make the necessary entries before a patta is granted and also to enable him to have all the material to make correct entries in the necessary papers till the date of notification.

12. It is thus clear that the question whether the Superintendent, Survey and Settlement had the power to grant the. patta under the several rules, Circulars, Government orders, and the provisions of the Hyderabad Land Revenue Act would depend upon the determination of questions of fact as to whether the lands were Gut numbers or Kharij Khata or forest or Araj Uftada, that is, land which is cultivable but left fallow for 5 years or poramboke.

Further it is also to be determined whether the patta was in fact cancelled, as alleged by the Government. There is then the question of bar of limitation for the exercise of the right of the petitioner under the sale deed in his favour in 1929 not having been in possession of the lands.

13. The curious fact in this case is the long delay that has taken, place from the date of the grant of the patta and the sale in favour of the petitioner to the date when the Revenue Minister dismissed the revision. During the period of 26 years except for the petitioner filing petitions, he does not appear to have taken any further action to prosecute his claim in a civil court.

Even though he never obtained possession during the whole of this long period and his rights would become barred, he never attempted to enforce his right by filing a suit against the Government after obtaining permission of the Government. He was content merely with filing applications. It is no doubt true that from 1932 to 1937 he had applied to the Revenue Department at intervals and was asked to wait, but thereafter it does not appear from the papers filed before us that he made any application for a period of 12 years, that is, until after 6-4-1949 when he made an application to the Military Governor seven

months after the Police Action.

As a reasonable and prudent man he would have known that not having possession of the land, his claim would become barred unless he took action in a Court of law. He is clearly guilty of laches and cannot be heard to say that he waited for 12 years without further action, merely because the Revenue Department had asked him to wait.

14. Proceedings in writ petitions are not appropriate for the determination of these complicated questions of fact, nor does the High Court ordinarily exercise its powers of extraordinary jurisdiction under Art. 226 to determine questions of title or make any enquiry relating thereto.

Although very large powers are conferred of the High Courts under Art. 226, the exercise on those powers is not without limitations, because the courts themselves have laid down certain principles limiting the exercise of that power in certain cases such as that the High Court was not convert itself into a court of appeal on merit unless the decision is erroneous on the face on the record, and in matters involving the use c discretion and judgment entrusted to an authority by law, it will not direct that authority (sic) pass orders or itself pass orders on merits, (sic) where complicated questions of fact have to the determined, it will not turn itself into a trial Court and determine those questions of fact (sic) investigate title, nor will it issue ineffective writ

Where there is an alternative and effective remedy also, the court may not ordinarily exercise its extraordinary jurisdiction, though it would not be correct to say that in such cases an a(sic) plication will not lie. It can only be said the where there is an alternative and effective r(sic) medy, the High Court will not in exercise of i(sic) discretion grant an application; but this is on a rule of discretion and. expediency and does not arise due to any want of jurisdiction or limitation on the power of the High Court.

15. In this case the claim is a stale on and involves investigation and determination certain questions of fact upon which the power and validity of the action of the Superintendent, Survey and Settlement, to grant patta would depend. Even if the impugned order quashed, it would still involve the petition agitating his title in a Court of law.

16. For these reasons this application can not be entertained and is dismissed with cost Advocate"s fee Rs. 100/-.